



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2013-0492; FRL-9981-67-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans; Delaware;**

**Interstate Transport Requirements for the 2010 1-Hour Sulfur Dioxide Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve portions of a state implementation plan (SIP) revision submittal from the State of Delaware. This revision addresses the infrastructure requirement for interstate transport of pollution with respect to the 2010 1-hour sulfur dioxide (SO<sub>2</sub>) national ambient air quality standard (NAAQS). This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2013-0492 at <http://www.regulations.gov>, or via email to [spielberger.susan@epa.gov](mailto:spielberger.susan@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will

generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Joseph Schulingkamp, (215) 814-2021, or by e-mail at [schulingkamp.joseph@epa.gov](mailto:schulingkamp.joseph@epa.gov).

**SUPPLEMENTARY INFORMATION:** On May 29, 2013, the State of Delaware, through the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a SIP revision addressing the infrastructure requirements under section 110(a)(2) of the CAA for the 2010 1-hour SO<sub>2</sub> NAAQS.

## **I. Background**

### **A. General**

On June 2, 2010, the EPA promulgated a revised primary SO<sub>2</sub> standard, establishing a new 1-hour primary standard at the level of 75 parts per billion (ppb), based on the 3-year average of the annual 99<sup>th</sup> percentile of 1-hour daily maximum concentrations (hereafter “the 2010 1-hour SO<sub>2</sub> NAAQS”). At the same time, the EPA also revoked the previous 24-hour and annual primary SO<sub>2</sub> standards. *See* 75 FR 35520 (June 22, 2010). *See* 40 CFR 50.11. The previous SO<sub>2</sub> air quality standards were set in 1971, including a 24-hour average primary standard at 140 ppb and an annual average primary standard at 30 ppb. *See* 36 FR 8186 (April 30, 1971).

Current scientific evidence links short-term exposures to SO<sub>2</sub>, ranging from five minutes to 24 hours, with an array of adverse respiratory effects including bronchoconstriction and increased

asthma symptoms. These effects are particularly important for asthmatics at elevated ventilation rates (e.g., while exercising or playing). Studies also show a connection between short-term exposure and increased visits to emergency departments and hospital admissions for respiratory illnesses, particularly in at-risk populations including children, the elderly, and asthmatics.

## **B. EPA's Infrastructure Requirements**

Pursuant to section 110(a)(1) of the CAA, states are required to submit a SIP revision to address the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements to assure attainment and maintenance of the NAAQS – such as requirements for monitoring, basic program requirements, and legal authority. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances of each NAAQS and what is in each state's existing SIP. In particular, the data and analytical tools available at the time the state develops and submits the SIP revision for a new or revised NAAQS affect the content of the submission. The content of such SIP submission may also vary depending upon what provisions the state's existing SIP already contains.

Specifically, section 110(a)(1) provides the procedural and timing requirements for SIP submissions. Section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS.

## **C. Interstate Pollution Transport Requirements**

Section 110(a)(2)(D)(i)(I) of the CAA requires a state's SIP to include adequate provisions prohibiting any emissions activity in one state that contributes significantly to nonattainment, or interferes with maintenance, of the NAAQS in any downwind state. The EPA sometimes refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance), or jointly as the "good neighbor" provision of the CAA. Further information can be found in the Technical Support Document (TSD) for this rulemaking action, which is available online at [www.regulations.gov](http://www.regulations.gov), Docket number EPA-R03-OAR-2013-0492.

## **II. Summary of SIP Revision and EPA Analysis**

On May 29, 2013, Delaware submitted, through DNREC, a revision to its SIP to satisfy the infrastructure requirements of section 110(a)(2) of the CAA for the 2010 1-hour SO<sub>2</sub> NAAQS, including the interstate transport requirements of section 110(a)(2)(D)(i)(I). On January 22, 2014 (79 FR 3506), the EPA approved Delaware's infrastructure SIP submittal for the 2010 1-hour SO<sub>2</sub> NAAQS for all applicable elements of section 110(a)(2) with the exception of 110(a)(2)(D)(i)(I). This proposed rulemaking action is addressing the portions of Delaware's infrastructure submittal for the 2010 1-hour SO<sub>2</sub> NAAQS that pertain to transport requirements.<sup>1,2</sup>

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<sup>1</sup> For the EPA's explanation of its ability to act on discrete elements of section 110(a)(2), *see* 80 FR 2865 (Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Infrastructure Requirements for the 2008 Ozone, 2010 Nitrogen Dioxide, and 2010 Sulfur Dioxide National Ambient Air Quality Standards; Approval of Air Pollution Emergency Episode Plan (January 21, 2015)).

<sup>2</sup> This proposed approval action is based on the information contained in the administrative record for this action, and does not prejudice any other future EPA action that may make other determinations regarding any of the subject state's air quality status. Any such future actions, such as area designations under any NAAQS, will be based on their own administrative records and the EPA's analyses of information that becomes available at those times. Future available information may include, and is not limited to, monitoring data and modeling analyses conducted pursuant to the EPA's SO<sub>2</sub> Data Requirements Rule (80 FR 51052, August 21, 2015) and information submitted to the EPA by states, air agencies, and third-party stakeholders such as citizen groups and industry representatives.

The portions of Delaware's May 29, 2013 SIP submittal addressing interstate transport (for section 110(a)(2)(D)(i)(I)) discuss how Delaware does not significantly contribute with respect to the 2010 1-hour SO<sub>2</sub> NAAQS to nonattainment in, or interfere with maintenance in, any other state and discusses prevailing wind direction in the region. Additionally, Delaware described in its submittal several existing SIP-approved measures and other federally enforceable source-specific measures, pursuant to permitting requirements under the CAA, that apply to SO<sub>2</sub> sources within the state.

Based on EPA's analysis, EPA agrees with Delaware's general conclusion that the existing Delaware SIP is adequate to prevent sources in Delaware from significantly contributing to nonattainment or interfering with maintenance in another state with respect to the 2010 1-hour SO<sub>2</sub> NAAQS. A detailed summary of EPA's review and rationale for proposed approval of this SIP revision as meeting CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO<sub>2</sub> NAAQS may be found in the TSD.

### **III. Proposed Action**

EPA is proposing to approve the portions of Delaware's May 29, 2013 SIP revision addressing interstate transport for the 2010 1-hr SO<sub>2</sub> NAAQS as these portions meet the requirements in section 110(a)(2)(D)(i)(I) of the CAA. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as

meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, addressing Delaware's interstate transport requirements for the 2010 1-hour SO<sub>2</sub> NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

**Authority:** 42 U.S.C. 7401 et seq.

Dated: July 12, 2018.

Cosmo Servidio,  
Regional Administrator,  
Region III.

[FR Doc. 2018-16796 Filed: 8/7/2018 8:45 am; Publication Date: 8/8/2018]